Ann. F. IX-4

Previous References

1932

(Law)

File No. 174-32

Serial Nos. 1 — 7

Later References
S.R. 14-33-1

14

Preserve

PRESERVED

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Part B. for August — 1933.

SUBJECT.

Re: signing of declarations by Magistrates.

21 2 Re D. Dr. Junction

No. P. 754 of 14. 8. 33

Informs that the affidavits have to be attested by the Magistrates unless they have good reasons to refuse to attest & they must see that the document is duly stamped.

Regd Agts
23. 8. 33

02284/32
P.O.

No. J.C.156/32-33
Enc. one.

OFFICE OF THE DISTRICT MAGISTRATE,
TUMKUR DISTRICT.

Dated, Tumkur, the 29th May *1933.*

FROM

T.Abdul Khader Esq., B.A.,
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Offg. *District Magistrate, Tumkur District,*
TUMKUR.

Pol. Dept. MAY 1933

Law 174-32-1

T.

Ranga Rao Esq., B.A., B.L.,
Chief Secretary to the Govt.
of Mysore, Bangalore.

Law
Pol.
21/5

Subject

SIR,

In forwarding herewith copy of my letter No.J.C.156/32-3 dated 13th May 1933 addressed to the Government Advocate in Mysore, Bangalore and a copy of letter No.883 dated 18th May 1933 received from him in reply thereto regarding the signing of declarations by Magistrates, I have the honor to request you to kindly inform me whether Magistrates are bound to attest such declarations as the Company is a private body. Copy of letter No.5370 dated 1-4-33 received from the Managing Agents, the Reliance Assurance Co., Ltd., New Thargupet, Bangalore City together with a copy of reply sent from this office and the reply received from the company thereto is also enclosed for kind reference.

I have the honor to be,

Sir,

Your most obedient servant,

Offg. District Magistrate,
Tumkur District

21/5/33

Assurance Co. Ltd is a registered
under the Mysore Companies Regn.
affidavits are to be sworn
any Court or magte under
the Companies Regn. The Question
how far such magte are responsible for the age given is a matter for Court

6224

Serial No.

1) what are the declarations that are required to be sworne to before a Magte? The inform available is not enough to make out whether Sec 245 of the Companies Act applies to these cases —

2) Please put up a draft calling for details

DMC 16/6/33

2) Draft put up accordingly

ISD 2/6. MSK.

DSouza 2/6

TYPING SECTION * 2 JUN. 1933 * GENL. & REVENUE SECTT.

To,

The Dist. Magte Tumkur

no. P 6287 d 6.6.33 enquiring about the nature of the declarations that are required to be sworne to before a Magte

Sec A 7/6/33

From,

The D. M. Tumkur

no. JC 156/32-33 dated 15.7.33 forwarding a declaration that has been affirmed to before the magte and stating that it does not come under sec 245 of the Companies Act.

5) Submit for orders who Magte to before whom

ISD 18/7.

Contn. Sheet.

283/P/37

File No. of 193 | General and Revenue Secretariat

6) Forwarded with compliments to the Govt. Advocate for favour of opinion as to whether the Magistrates are bound to attest such declarations and if so under what provision of law.

Bonparlee
for Govt Agent
19/7/33

G.A. No. P 90/32 dated 19/7/33

No. 57/33-34 of 20.7.33

Returned with compliments.

No. 17/33-34 of 9.8.33

7) There seems to be no express provision ~~anywhere~~ according to which Magistrates are bound to sign - declarations of the sort in question. The only provisions in this respect are Sections 539 and 539A of the Criminal Procedure Code which refer ~~the~~ to affidavits and affirmations to be filed in Courts. But on account of the importance attached to statements made before Magistrates on oath or on solemn affirmation, and the penalties to which declarants would be exposed in case such statements are false,- such declarations are - required for various purposes- ~~and~~ this practice has continued for a long time. If the Magistrates refuse to sign such declarations it would cause much trouble and hardship to the public. Though there seems to be no express provision requiring them to sign such - declarations, I think as Public Functionaries they ought to certify such declarations.

GENERAL 9 AUG 1933 No. P 90 REGISTRY

Government Advocate.
7.8.1933

CSN.

Serial No.

8) Magistrates and other Judicial officers are empowered under the Oaths Act to swear and attest an affidavit. When a power is given to a public functionary to be used for the good of the public, it follows that he cannot refuse to exercise the power when the other conditions prescribed for such exercise is fulfilled. It therefore follows that if a person wants to swear to a declaration or an affidavit before a magistrate and does what he is required to do by law, the magistrate cannot refuse to sign or certify the same, unless he has some good reasons to do so.

9) In the case of affidavits, the provisions of the Stamp Regulation do not require article 4 of Schedule I require a stamp of Re 1/8/. except in two cases viz ~~●~~ when the affidavit or declaration is made a) for the immediate purpose of being used or filed in any Court or b) for the sole purpose of enabling a person to receive a pension or other charitable allowance. This does not seem to be strictly enforced. Magistrates & other officers empowered to administer oaths, sign & swear to the affidavits without any examination as to whether the document is one which requires stamp under the law or not. For instance the declaration

NOTE—Contn. Sheet.

WD 0246 —GPB—15,000—22-8-32

Serial No.

8) Magistrates and other judicial officers are empowered under the Oaths Act to swear and attest an affidavit. When a power is given to a public functionary to be used for the good of the public, it follows that he cannot refuse to exercise the power when the other conditions prescribed for such exercise is fulfilled. It therefore follows that if a person wants to swear to a declaration or an affidavit before a magistrate and does what he is required to do by law, the magistrate cannot refuse to sign or certify the same, unless he has some good reasons to do so.

9) In the case of affidavits, the provisions of the Stamp Regulation do not require any of Schedule I require a stamp of Re 1/8/. except in two cases viz. when the affidavit or declaration is made a) for the immediate purpose of being used or filed in any court or b) for the sole purpose of enabling a person to receive a pension or other charitable allowance. This does not seem to be strictly enforced. Magistrates & other officers empowered to administer oaths, sign & swear to the affidavits without any examination as to whether the document is one which requires stamp under the law or not. For instance the declaration

NOTE—Contn. Sheet.

WD 0246 -GPB—15,000—22-8-32

File No. of 193 . | General and Revenue Secretariat

sent with the Punisur ~~Deputy's~~ letter of 15th July requires a stamp of Re 1/8/. It is perhaps desirable to issue a circular in this matter from the Fin Secrt (stamp Secy).

(10) If appd, a reply ~~are the address~~ now will be issued to the Dy Pte Tumkur, stating that ~~the~~ affidavits ~~or~~ which include affirmations or declarations, ~~[illegible]~~ which any person may wish to swear to before magistrates ought to be attested to by the magistrates unless they have good reasons to refuse to attest, but that in all such cases they must see that the document is duly stamped under article 4 of schedule I A of the Stamp Rules. After issue of this reply the file will be sent to the Fin Secrt for considering the question of issuing a circular as suggested above.

Gen Secy) DNP 1078

I agree

I Member

GENERAL SECRETARIAT 10 AUG. 1933 No.

OFFICE OF THE FIRST MEMBER 11 AUG. 1933 No. 1239

LDM 10/8

DNP 10/8

LDM 11/8/33

LDM 11/8 DNP

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

m) Dft pur up for appl

ISD 12/8

Issue MP 12/8

To,

Shri D. M. Tumkur

No. P-754 d 14.8.33 informing that the affidavits have to be attested by the Magistrate under Rly. Laws & Rly. must see that the document is duly stamped.

Folder: B 15/8/33

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31.

Letter No.5773 dated 18-4-33 from the Managing Agents, The Reliance Assurance Co., Ltd., New Tharagupet, Bangalore City, to the District Magistrate, Tumkur District, Tumkur.

With reference to your letter No.J.C.156/32-33 dated 5-4-3 we have to draw your attention that we have to be addressed as the Managing Agents but not as the Manager.

It is the general provision of law and fules under the Criminal Procedure Code that the Declarants are bound to sign before any ~~Mxgxxxxxx~~ Magistrate either stipendary or honorary appointed as p provisions of the said code, in order to prove the identity of the person who declares.

We regret to note that you the highest Judicial Officer of the District ask us for the rule of law etc. If you think that you or the Magistrates under you in your District are not bound to sign su declarations, please give us an authoritative ruling to that effect so that we may move higher judicial authorities in this matter.

In this particular instance, ~~xxx~~ we should like to be elucidated under what provisions of law your 2nd Magistrate entertained this declaration form signed by one Mr.Kempiah who was actually 21 years of age but had declared that he was 56 years of age.

Thanking you in anticipation.

'C o p i e s.'

C Ramachandra Rao

~~Offg~~. District Magistrate.

29/5/33 Tumkur District

Letter No.J.C.156/32-33, dated 13-5-33 from the District Magistrate, Tumkur, to the Govt., Advocate in Mysore, Bangalore.

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In forwarding herewith copy of letter No.5370 dated 1-4-33 received ~~xxx~~ in this office from the Managing Agents, The Reliance Assurance Co., Ltd., New Tharagupet, Bangalore City, together with the copy of reply sent from this office and the copy of reply received from the Managing Agents regarding the signing of declarations by Magistrates, I have the honor to request you to be so good as to inform me whether the Magistrate is bound to attest such declarations as the company is a private body. The favour of an early reply is solicited.

Letter No.883 dated 18-5-33 from the Government Advocate in Mysore, to the District Magistrate, Tumkur.

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With reference to your letter No.J.C.156/32-33 dated the 12th May 1933, I have the honor to invite your attention to G.O.No.4464-4574/ C.B.177-30-1 dated the 20th May 1931 and to state that as contemplated therein, all questions for legal opinion have now to be referred to the Secretary to Government in charge of the Law Section of the Secretariat and not to this office.

Letter No.5370 dated 1-4-33 from the Managing Agents, the Reliance Assurance Co., Ltd., New Tharagupet, Bangalore City, to the District Magistrate, Tumkur.

We have the honor to forward herewith the ~~xxxxxx~~ declaration form in original and letter in original dated 1-4-33 sent by the declarant thereof for your perusal and return with an observation that such declarations are being indiscriminately signed by your subordinate Magistrates without the least exertion to find out or note whether the person who declares is at least approximately of the age mentioned in the form or an older or younger man. In this case the declarant is of the age of 20 or 21 years but his age is noted in the form as 56 years. This was found out on verification in this office and the letter dated 1-4-33 is the explanation given. This is not the only instance in your District.

May we, therefore, request you to take such necessary steps that all your subordinate Magistrates both stipendary and honorary do not in future sign such declarations unless they are satisfied though not about the identity, that the age of the declarant is approximately correct by appearance.

Thanking you in anticipation.

Letter No.J.C.156/32-33 dated 5-4-33 from the District Magistrate, Tumkur, to the Managing Agents, The Reliance Assurance Co., New Tharagupet, Bangalore City.

With reference to your No.5370 dated the 1st April 1933 about the alleged signing of declarations indiscriminately by Magistrates, I have the honor to enquire under what rule of law you expect any Magistrate to entertain such declarations.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 5th/6 June *1933.*

No. P6287.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysor..*

To

The District Magistrate,
Tumkur District.

Sir,

With reference to your letter No.J.C.156/32-33 dated 29th May 1933 re. signing of declarations by Magistrates, I am directed to enquire about the nature of the declarations that are required to be sworne to before a Magistrate, and whether they come under Section 245 of the Mysore Companies Regulation.

I have the honour to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

NEG.2.

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193* .

Date of issue 6. 6. 33

Signed by Mr N. R. J.

List of enclosures.....

Copied by 7/6/33

Examined by.....

Section

File No.

Serial No.

No. P6287.

To The District Magistrate

Tumkur

Sir,

With reference to your letter no. Jc 156/32-33 dated 29th May 1933 re: Signing of declarations by magistrate, I am directed to enquire ~~request you to furnish~~ the nature of the declarations that are required to be sworne to before a magistrate, and whether they come under sec 245 of the Mysore Companies Regulation. ~~is applicable to the one~~ under question

I have the honour to be,

Sir,

Your most obedient servant,

ISD 2/6

283 P 33

No. J.C.156/32-33
Enc. one

OFFICE OF THE DISTRICT MAGISTRATE,
TUMKUR DISTRICT.

Dated, Tumkur, the 15th July *193* 3

FROM

Abdul Khader Esq., B.A.,
[redacted]
Offg. *District Magistrate, Tumkur District,*
TUMKUR.

To,

V.N.Appanna Iyengar Esq., B.A., B.L.,
General Secretary to the Govt.
of Mysore, Bangalore.

GENERAL SECRETARIAT
17 JULY 1933
No. P.

SIR,

With reference to your letter No.P.6287 dated 5/6th June 1933, re: signing of declarations by Magistrates. I have the honor to forward, herewith, in original, the declaration that has been affirmed to before the Magistrate. This may kindly be returned when done with. The present declaration does not come under section 245 of the Mysore Companies Regulation.

I have the honor to be,

Sir,

Your most obedient servant,

Abdul Khader

For District Magistrate,
Tumkur District.

No. 2754 Genl.

From

The General Secretary to Govt.

To

The District Magistrate,

Tumkur District.

12th August 1933.

Sir,

With reference to the correspondence ending with your letter No. [illegible]-33 dated 15th July 1933 regarding signing of declarations by Magistrates, I am directed to state that affidavits which include affirmations or declarations which any person may wish to swear to before Magistrates ought to be attested to by the Magistrates unless they have good reasons to refuse to attest, but that in all such cases they must see that the document is duly stamped under article 4 of Schedule I A of the Mysore Stamp Regulation.

The enclosure to your letter is herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,

For General Secretary to Government.

S.R.-2

Appendix F G—1]

SUBJECT.....

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.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193* .

Date of issue 14/8/33

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

Section Law

File No. 174-32

Serial No. 2

No. P 754/Enl

To

The District Magistrate

Tumkur.

Sir,

With reference to the Correspondence ending with your letter no. J.E. 156/32-33 dated 7th July 1933 re: Signing of declarations by magistrates, I am directed to state that affidavits should include affirmations or declarations which any person may wish to swear to before magistrates ought to be attested to by the magistrates unless they have good reasons to refuse to attest, but that in such cases they must see that the document is duly stamped

under article 4 of Schedule I A
of the Mysore Stamp Regulation.

The enclosure to your letter
is herewith returned.

I have etc.

for Genl Secy

ISD
12/8

12/8